

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5506 OF 2005

Dilip Ramkrishna Suryawanshi & Anr. ...Applicants
VS.
The State of Maharashtra ...Respondent

Mr.Sudatta Patil for the Applicants
Ms M.H.Mhatre,A.P.P. for State

CORAM: A.S.OKA, J.
DATE : AUGUST 31,2005

P.C.:

1. Heard Advocate for the Applicants and the learned A.P.P. for State.

2. Earlier application made by the Applicants in this Court in the same case was disposed of by order dated 11th August 2005. The said application was disposed by directing that in the event the Respondent was desirous of arresting the Applicants in connection with the offence, 72 hours clear notice will be given to the Applicant. The said order was passed on the basis of the statement made by the learned A.P.P. which is recorded in paragraph No.2 of the said order. The said statement reads thus :

"2. The learned A.P.P. for the State stated that the State does not desire to arrest the Applicants immediately as investigation is in progress. He states that in case the State desires to arrest the Applicants in connection with C.R.No.94 of 2005 registered at Miraj Rural Police station, 72 hours

clear notice excluding public holidays will be given to the Applicants. The statement is accepted."

3. On plain reading of the order dated 11th August 2005 passed by this Court it is very clear that in view of the statement made by the learned A.P.P. there was no apprehension that the Applicants will be arrested immediately. Therefore, the Application for anticipatory bail was not considered by this Court on merits. This Court disposed of the Criminal Application No.4787 of 2005 by recording the aforesaid statement of the learned A.P.P. After 72 hours notice was given by the Respondent, it was naturally open for the Applicants to file a fresh application for anticipatory bail. Accordingly, the Applicants filed an application before the Sessions Court. From the order dated 23rd August 2005 passed by the learned Additional Sessions Judge, Sangli, I find that the bail application made by the Applicants is not considered on merits on the ground that as a direction was given by this Court for issuing 72 hours notice, it will not be proper to grant anticipatory bail. In my view, the said approach of the learned Additional Sessions Judge was incorrect. The application for anticipatory bail was filed by the Applicants on the basis of apprehension of arrest as reflected from the notice given by the prosecution. The application ought to have been considered on merits.

4. Instead of entertaining this application, the proper course will be to set aside the order passed by the learned Additional Sessions Judge and direct him to decide the application on merits.

5. Hence I pass the following order :

i) The order dated 23rd August 2005 passed by the III Additional Sessions Judge, Sangli is quashed and set aside.

ii) The learned 3rd Additional Sessions Judge will decide the Criminal Misc. Application No.383 of 2005 afresh on its own merits in accordance with law. The application shall be decided as expeditiously as possible and preferably within a period of two weeks from the date of receipt of the writ of this order.

iii) Till the decision of the said application, the Applicants shall not be arrested in connection with C.R.No.94 of 2005 registered at Miraj Rural Police Station, District Sangli subject to condition of complying with the conditions incorporated in clause (i) to (iii) of Sub Section 2 of Section 438 of the Code of Criminal Procedure, 1973.

iv) Writ of this order be issued immediately.

. Parties and the concerned Court to act upon an

authenticated copy of this order.

JUDGE